

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF NEVADA

3
4 BRANCH BANKING AND TRUST
COMPANY,

5 Plaintiff,

6 v.

7 D.M.S.I., L.L.C., *et al.*,

8 Defendants.
9

Case No. 2:11-cv-01778-APG-VCF

**ORDER GRANTING IN PART AND
DENYING IN PART PLAINTIFF'S
MOTION FOR NON-TAXABLE
COSTS**

(ECF No. 157)

10 Plaintiff Branch Banking and Trust Company (BB&T) previously moved for an award of
11 attorney's fees and non-taxable costs incurred in connection with this matter. I denied BB&T's
12 request for non-taxable costs because it was unclear what costs BB&T was seeking as non-
13 taxable costs. However, I granted BB&T leave to file a new motion for non-taxable costs.

14 BB&T renews its motion for non-taxable costs in the amount of \$3,677.39 and attaches in
15 support a declaration and a spreadsheet purporting to show costs incurred in this action. The
16 defendants oppose, arguing that the description of certain costs is inadequate to determine what
17 the cost was, whether it was related to this litigation, and whether it was reasonable. Specifically,
18 the defendants object to: (1) four of the five cost items related to the deposition of Tamara
19 Stidham; (2) the cost items related to the deposition of Oscar Bruni; (3) the cost items related to
20 the hearing on the motion to compel; (4) the cost items related to the hearing on the motion for
21 summary judgment; and (5) Westlaw research.

22 BB&T responds that the agreements between the parties do not condition the recovery of
23 fees on reasonableness. BB&T also argues that the small dollar amounts and the identification of
24 the depositions and hearings are sufficient to award BB&T its costs.

25 **I. LEGAL STANDARD**

26 Non-taxable costs are recoverable on a motion to the court under Rule 54(d)(2). Fed. R.
27 Civ. Proc. 54(d)(2); *see also* LR 54-16(b)(2) (a motion for attorney's fees must include "[a]n
28 itemization of all costs sought to be charged as part of the fee award and not otherwise taxable

1 pursuant to LR 54-1 through 54-15"). An award of costs involves a two-step inquiry. I must first
2 determine who is a "prevailing party" under Rule 54, and then I must determine "how much (if
3 any) costs should be awarded to the prevailing party." *Shum v. Intel Corp.*, 629 F.3d 1360, 1366
4 (Fed. Cir. 2010); *Ass'n of Mex.-Am. Educators v. Cal.*, 231 F.3d 572, 593 (9th Cir. 2000) (noting
5 that district courts have discretion in choosing to award costs under Rule 54(d)). There is a
6 presumption in favor of awarding costs to the prevailing party. *Dawson v. City of Seattle*, 435
7 F.3d 1054, 1070 (9th Cir. 2006). To overcome this presumption, the losing party must establish a
8 reason to deny costs. *Id.*

9 As stated in my prior order, BB&T is a prevailing party who is entitled to recover some
10 non-taxable costs under the loan documents. ECF No. 154. Thus, the only question is what
11 amount, if any, BB&T should be awarded.

12 **A. Deposition of Tamara Stidham**

13 The spreadsheet identifies four costs items that are described only as "Travel to Las Vegas
14 for Depo of Tamara Stidham" and one item that is described as "Travel to Las Vegas for Depo of
15 Tamara Stidham; airport parking." ECF No. 157-1 at 5. Only the airport parking item is
16 sufficiently described for me to determine whether the cost incurred was reasonable. BB&T
17 contends it need not show its costs were reasonable because the loan documents do not limit
18 recovery to reasonable costs. However, every contract has an implied covenant of good faith and
19 fair dealing. *See Ins. Co. of the W. v. Gibson Tile Co.*, 134 P.3d 698, 702 (Nev. 2006).
20 Consequently, BB&T cannot seek unreasonable or unrelated costs. Because BB&T has not
21 adequately described these requested costs, I deny them except for the \$14.00 in airport parking.

22 **B. Deposition of Oscar Bruni**

23 The spreadsheet identifies five costs items that are described only as "Deposition of Oscar
24 Bruni." ECF No. 157-1 at 5. Because BB&T has not adequately described these requested costs,
25 I deny them.

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